

**LANE TRANSIT DISTRICT
DISADVANTAGED BUSINESS ENTERPRISE POLICY**

Revised November 2019

I. POLICY STATEMENT

Lane Transit District ("District") is committed to a Disadvantaged Business Enterprises (DBE) Program for the participation of "DBEs" in District contracting opportunities in accordance with 49 Code of Federal Regulations (CFR) Part 26, effective March 4, 1999, as may be amended ("Regulations"). The District has received federal financial assistance from the Department of Transportation; and as a condition of receiving this assistance, the District has signed an assurance that it will comply with 49 CFR Part 26 (see Appendix E). It is the policy of the District to ensure nondiscrimination on the basis of race, color, sex, or national origin in the award and administration of the U.S. Department of Transportation ("U.S. DOT")-assisted contracts. It is the intention of the District to ensure DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in contracting opportunities, and create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to the District's federally funded construction, procurement, and professional services activities.

The Lane Transit District Board of Directors is responsible for establishing the DBE policy of the District. The General Manager of the District is responsible for adherence to this policy. The DBE Liaison Officer is responsible for the development, implementation, and monitoring of a DBE Program for Contracts in furtherance of the District's nondiscrimination policy and to ensure that the DBE program is fully compliant with applicable law. It is the expectation of the Board of Directors and the General Manager that all District personnel shall adhere to the provisions and the spirit of this program.

This policy statement will be circulated to all District personnel and to members of the community who perform or are interested in performing work on District contracts. The complete DBE Program and overall triennial DBE goal methodology is available for review on the LTD website at www.ltd.org or at:

Lane Transit District
3500 East 17th Avenue
Eugene, Oregon 97403

The policy statement will be published in a newspaper of statewide (Oregon) general circulation at least once.

If you have any questions or would like further information regarding this program, please contact the DBE Liaison Officer by telephone at 541-682-6100 or by email at DBELO@ltd.org.



Aurora Jackson
General Manager

11/20/2019

Date

LANE TRANSIT DISTRICT

DISADVANTAGED BUSINESS ENTERPRISE POLICY AND PROGRAM

I. GENERAL

A. Applicability

Lane Transit District of Oregon ("District") has established this Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (U.S. DOT), Federal Transit Administration (FTA). As a condition of funding assistance, and in accordance with federal regulations published at 49 CFR Part 26, the District is required to submit for approval, to the FTA, a DBE Program, and an overall agency DBE goal which it agrees to implement in accordance with the prescribed regulations. This Program sets forth the policies and procedures to be implemented by the District to ensure that DBEs have an equitable opportunity to participate in all District contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance.

In the event of any conflicts or inconsistencies between the Regulations and the District's DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail.

The District is currently implementing its DBE Program and corresponding and Overall Agency DBE goal utilizing strictly race-neutral measures.

The District is also effectively complying with directives and guidance received from U.S. DOT, specifically notices issued on March 23, 2006 and August 21, 2006 as a result of the Ninth Circuit ruling in the Western States Paving vs. Washington State Department of Transportation requiring recipients to utilize strictly race-neutral measures.

Should significant changes in the District's DBE Program occur, the District shall submit updates on timely basis to FTA for approval.

B. Objectives

The objectives of this Program are as follows:

1. To remove barriers that impede DBE participation in the bidding, award, and administration of District contracts;
2. To assist DBEs to develop and compete successfully outside the District's DBE Program;
3. To ensure that the Program is narrowly tailored in accordance with 49 CFR Part 26 and current legal standards, including the Ninth Circuit Ruling in Western States Paving vs. Washington State Department of Transportation;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are allowed to participate as DBEs;

5. To identify business enterprises that are eligible as DBEs to provide the District with required materials, equipment, supplies, and services; and to develop a good rapport with the owners, managers, and sales representatives of those enterprises;
6. To develop communications programs and procedures that will acquaint prospective DBEs with the District's contract procedures, activities, and requirements and allow DBEs to provide the District with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and
7. To administer the Program in close coordination with the various divisions and departments within the District so as to facilitate the successful implementation of this Program.

C. Prohibited Discrimination

The District shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by 49 CFR Part 26 on the basis of race, color, sex, or national origin. The District shall not directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this program with respect to individuals of a particular race, color, sex, or national origin.

The District does not use quotas in any way in the administration of this DBE program.

II. DEFINITIONS

The definitions of terms contained in 49 CFR §26.5 shall be used as definitions in the LTD DBE program and are hereby incorporated by reference: http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

III. RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION

A. Duties of DBE Liaison Officer

Pursuant to 49 CFR § 26.23, the Program shall be administered by the DBE Liaison Officer, who shall be appointed by and report directly to the General Manager of the District. The current DBE Liaison Officer for the District is the Director of Business Services who may be contacted as follows:

Director of Business Services
Lane Transit District
3500 East 17th Avenue
Eugene, Oregon 97403
Phone: 541-682-6100
E-mail: DBELO@ltd.org

The DBE Liaison Officer will be the primary person responsible for implementing all aspects of this Program and will work closely with operating divisions and other

departments and consultants of the District, including those who provide for legal, procurement, engineering, insurance, and other types of services, and who are responsible for making decisions relative to the District's construction, procurement, and professional service contracts. The DBE Liaison Officer:

1. Gathers and reports statistical data and other information as required by DOT;
2. Reviews third-party contracts and purchase requisitions for compliance with this program;
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner;
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results;
5. Analyzes District's progress toward goal attainment and identifies ways to improve progress;
6. Participates in pre-bid meetings;
7. Advises the General Manager and Board of Directors on DBE matters and achievement;
8. Participates with legal counsel and project director to determine contractor compliance with good-faith efforts;
9. Provides DBEs with information and assistance in preparing bids; and
10. Participates in DBE training seminars.

IV. ADMINISTRATIVE REQUIREMENTS

A. DBE Program Updates

The District will continue to carry out this program until all funds from U.S. DOT financial assistance have been expended. The District will provide updates representing significant changes in the program to FTA for approval.

B. DBE Financial Institutions

Pursuant to 49 CFR § 26.27, the DBE Liaison Officer shall explore the full extent of services offered by banks and other financial institutions that qualify as DBEs in the Eugene-Springfield area and determine areas in which the District reasonably may utilize their services. The District also shall encourage its prime contractors to use the services of DBE financial institutions. There currently are no DBE financial institutions in Oregon that meet the needs of the District.¹

¹ <https://www.fdic.gov/regulations/resources/minority/mdi.html>

An annual search will be completed in September of each year reviewing the State of Oregon Financial Institutions and the Federal Deposit Insurance Corporation (FDIC) list for minority-owned financial institutions.

C. DBE Directory

The Oregon Office of Minority, Women, and Emerging Small Business (OMWESB) Database Directory is a consolidated and automated directory that identifies firms that have been certified either as a minority-owned business enterprise (MBE), women-owned business enterprise (WBE), or disadvantaged business enterprise (DBE) by the OMWESB. This DBE Database is maintained and updated daily by the OMWESB. Pursuant to 49 CFR Part 26, the DBE Liaison Officer will use the DBE Database as the primary resource in developing overall and contract-specific DBE participation goals, and in conducting outreach and other activities to promote DBE participation in U.S. DOT contracts. The DBE directory of certified firms is available on the Internet at <http://www.cbs.state.or.us/external/omwesb/>. The directory is updated daily; it shall be distributed to contractors and made available at the District to the public on request. The DBE Database shall include the firm's name, address, telephone number, and types of work for which the firm is certified as a DBE. The DBE Database shall not in any way prequalify the identified DBE firms with respect to licensing, bondability, competence, or financial responsibility.

D. Bidders' List

Pursuant to 49 CFR § 26.11, the DBE Liaison Officer will create and maintain a bidders list consisting of all firms bidding or proposing on District contracts as prime contracts and bidding or quoting on subcontracts on U.S. DOT-assisted projects. For every firm, the following information will be included: firm name, firm address, firm status as a DBE or non-DBE, firm's age, and firm's annual gross receipts. The DBE Liaison Officer will maintain the confidentiality of any proprietary information in accordance with applicable Oregon and federal law. This information will be requested of all bidders as further described in Section IX below.

E. Dissemination of Policy Statement

Pursuant to 49 CFR § 26.23, the DBE Liaison Officer shall issue a signed and dated Policy Statement throughout the District and to the business community, including DBEs and non-DBEs that perform work on U.S. DOT-assisted contracts for the District. The entire Program will be made generally available to the public upon request. The Policy and Program will be available on the District website. It will be sent to the Office of Minority Women and Emerging Small Business at the State of Oregon and minority business organizations each time the goal is updated.

F. Reporting to Federal Transit Administration

The DBE Liaison Officer will continue to provide the reports regarding DBE participation required by the Regulations to the Federal Transit Administration (FTA).

G. Overconcentration

The District has not currently identified over-concentration in any of the types of work that are the subject of its procurements. The District will continue to monitor over-concentration when data becomes available.

H. Business Development Program

At this time there is no formal business development program.

I. Fostering Small Business Participation

The District is taking steps to eliminate obstacles to the participation by small business concerns in contracting opportunities including, but not limited to, the following:

- Eliminating or reducing unnecessary and unjustified bundling of contract requirements, such as restrictive bonding or insurance requirements, that may preclude small business participation in procurements as prime contractors.
- Each September, identify contracting opportunities by reviewing projects with involved departments and Finance staff and determining budgeted projects, developing a contracting plan for the year and then looking at individual contracting opportunities, and determining the approach for best fostering small business participation.
- Upon identification of potential projects, a meeting will be held with small and disadvantaged business enterprises to get input from the community on contract participation.
- Requiring the prime contractors on certain contracts, such as construction or engineering contracts over \$1 million, to specify elements of the contract or specific subcontracts that are of a size and type that small businesses, including DBE businesses, can reasonably perform. Review possibility of requiring the contractor to set aside the contracting opportunity to small businesses only.
- Identifying alternative acquisition strategies and conducting outreach to small business forums to inform them of opportunities. The outreach will include working with prime contractors on large projects to ensure their subcontracting plan has included such an outreach program to small businesses.
- Monitoring the small business prime contractors or subcontractors to verify that they meet small business criteria.

V. DETERMINING OVERALL TRIENNIAL DBE PARTICIPATION AND ACHIEVING GOALS

Pursuant to 49 CFR § 26.45, the Board of Directors shall establish overall triennial goal on a three year basis for the participation of DBEs in all budgeted contracts utilizing FTA financial assistance. The overall triennial goal shall be expressed as a percentage of the total amount of FTA funds that the District anticipates expending in the fiscal year. The District's overall triennial goal represents the amount of ready, willing, and able DBEs that

are available to participate in contracting opportunities and is reflective of the amount of DBE participation that the District would expect absent the effects of discrimination. The District intends to meet those goals to the maximum extent feasible through the race-neutral measures described in Section V. D.

A. Methodology for Setting Overall Triennial DBE Goal

1. Projecting U.S. DOT-Assisted Contract Expenditures for Fiscal Year

In conjunction with the preparation and adoption of the budget for each fiscal year, the DBE Liaison Officer, in consultation with the appropriate District divisions and departments responsible for contracting activities, will conduct a thorough analysis of the projected number, types of work, and dollar amounts of contracting opportunities that will be funded, in whole or in part, by U.S. DOT federal financial assistance for the next three federal fiscal years. This analysis will exclude projected contract expenditures with transit vehicle manufacturers, which are exempt from the Program. The projection is shown in **Appendix B –Triennial DBE Goal Methodology**.

2. Establishing a Base Figure

Pursuant to 49 CFR § 26.45(c), the District will develop a base figure based upon the projected budget for the next three federal fiscal years to express the availability of DBEs as a percentage of all consultants, contractors, subcontractors, manufacturers, and suppliers in the relevant contracting markets. The District will follow one of the methodologies provided in the Regulations.

(a) Analyzing Available Businesses in the Relevant Contracting Markets

The DBE Liaison Officer, in conjunction with the appropriate District divisions and departments, will conduct a thorough analysis of the relevant contracting markets in which the District will solicit participation from consultants, subconsultants, contractors, subcontractors, manufacturers, and suppliers for the fiscal year. This analysis will include a description of geographical boundaries of the solicitations, the North American Industry Classification System (NAICS) for the types of work to be contracted, and any other indicators that the District determines to be relevant in defining its contracting markets for the fiscal year. The DBE Liaison Officer then will determine the total available businesses according to the relevant contracting markets, as shown in Appendix D. The DBE Liaison Officer will consult a variety of sources including, but not limited to, the District's Bidders' List, the U.S. Census County Business Patterns Database, and any relevant disparity studies that are available.

(b) Analyzing Available DBEs in the Relevant Contracting Markets

The DBE Liaison Officer will conduct a similar analysis to determine the DBEs that are available to participate as contractors, subcontractors, manufacturers, and suppliers in the projected contracts for the fiscal year.

This analysis will include a description of the available DBEs relative to the geographical boundaries of the solicitations and the NAICS codes for the types of work to be contracted. The District will consult a variety of sources including, but not limited to, the OMWESB Database, the District's Bidders' List, the U.S. Census, and any relevant disparity studies that are available.

(c) Calculating the Base Figure

The DBE Liaison Officer will compare the available DBEs in the relevant contracting markets for the fiscal year to the available businesses in the relevant contracting markets for the fiscal year. The calculation will include a weighting factor according to the contract expenditure patterns and is shown in Appendix C.

3. Adjusting the Base Figure

Pursuant to 49 CFR § 26.45(d), the District will examine all the evidence available to determine if an adjustment is necessary to the base figure to reflect the level of DBE participation expected absent the effects of discrimination. Included among the typed of evidence that must be considered are the current capacity of DBEs to perform work on LTD's federally assisted contracts, as measured by the volume of work DBEs have performed in recent years, and evidence from disparity studies conducted within LTD's jurisdiction, to the extent not already accounted for in the base figure. If available, LTD also must consider available evidence from related fields that affect the opportunities for DBEs to form, grow, and compete, including statistical disparities in the ability of DBEs to obtain the financing, bonding, and insurance required to participate in the Program. Any adjustment to the base figure must be based on "demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought," §26.45 (d) (3). At a minimum, the DBE Liaison Officer will analyze the results of the District's efforts to contract with DBEs for the current and past two years, any available and relevant disparity studies (to the extent that they are not accounted for in the base figure), and any available and relevant results of other and similar U.S. DOT recipients' efforts to contract with DBEs.

(a) Past DBE Utilization

Historical DBE participation attainments provide demonstrable evidence of DBE availability and capacity to perform on LTD projects that are substantially similar to previous years. LTD proceeded to calculate past DBE participation attainments for the three (3) federal fiscal years, for which DBE attainment data is available. The table below reflects the demonstrated capacity of DBEs (measured by actual historical DBE participation attainments) on FTA-assisted contracts awarded by LTD within the last three (3) federal fiscal years.

(b) Evidence from Local Disparity Studies

There have been no disparity studies done in the local area; therefore, there is no evidence to review.

(c) Adjustment Evaluation

After reviewing evidence, there is no indication to revise the base figure.

4. Projection of Percentage of Overall Goal to Be Achieved Through Race-Neutral and Race-Conscious Measures

The U.S. DOT regulations require that the DBE Overall Triennial Goal be met by using race-neutral methods.

B. Publishing and Adopting the Overall Triennial Goal

1. Overall Triennial DBE Goal Methodology

Upon completion of the analysis described in Section V.A., the DBE Liaison Officer will prepare an Overall Triennial DBE Goal Methodology. The report shall document the analysis and methodology as well as the proposed goal and estimate to be achieved through race-neutral measures. The DBE Liaison Officer shall furnish it to the General Manager. Upon the General Manager's approval and recommendation, the DBE Liaison Officer shall concurrently notify all DBE resource and community organizations of the availability of the Overall Triennial DBE Goal Methodology for review and comment.

2. Consultative Process

Prior to finalizing the overall DBE goal, the District will consult with local minority, women's and trade groups, and community organizations to obtain feedback on the overall DBE goal and information concerning the availability of DBEs and non-DBEs and the effects of discrimination on opportunities for DBE to compete in District projects.

Following the consultative process, the District will publish a notice of proposed overall goal on the District website, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at District's principal office for 30 days following the date of the notice, and informing the public that District and U.S. DOT will accept comments on the goals for 30 days from the date of the notice. See Appendix B for the Overall Goal Calculation and Race-Neutral / Race-Conscious Projections.

3. Publication of the Proposed Overall Triennial DBE Goal

Prior to submission of the proposed overall DBE goal to the U.S. DOT, the District will publish a notice of the proposed overall goal on the District's website. The notice will include:

- A statement that the methodology and proposed overall goal for DBE participation in the District's U.S. DOT-assisted contracts are available for public inspection for a period of 30 days from the date of publication.

- Notification that the District will accept public comments on the goal and rationale for a period of 30 days from the date of publication and provide instructions for the submission of such comments.

Upon receipt, the District's DBE Liaison Officer will analyze the public comments, summarize the results and formulate modifications to the overall goal or methodology as warranted and forward such to the Executive Director.

In addition to the provision of the public notice regarding the overall DBE goal, the District will undertake specific efforts to foster public participation by consulting with and soliciting input from a variety of constituent groups representing minorities, women, and general contractors, community groups, officials and other organizations reasonably expected to possess information regarding the availability of disadvantaged and non-disadvantaged businesses, the impacts and adverse effects of discrimination on DBE contracting, and the District's efforts to promote fair competition through the District DBE contracting program.

Both the DBE Program and overall goal will be reaffirmed by public notice triennially, prior to formal adoption by the District's Board of Directors and submission to U.S. DOT/FTA.

4. Adoption of the Overall Triennial DBE Goal

Following review of the Overall Triennial DBE Goal Methodology, the Board of Directors shall adopt the overall triennial DBE goal for DBE participation in FTA-assisted contracts, which shall include a projection of the portion of the goals that can be achieved through race-neutral and race-conscious measures. Unless otherwise directed, the Overall Triennial DBE Goal Methodology shall be submitted to FTA for approval by August 1.

C. Transit Vehicle Manufacturer's Certification

The District shall require any transit vehicle manufacturers to certify that they have established an overall triennial DBE participation goal that has been approved by FTA before they can bid on any District contracts. Expenditures for FTA-assisted transit vehicle procurements are not included in the funding base to which the overall triennial DBE goal for other FTA-assisted contract expenditures applies.

D. Achieving the Overall Triennial DBE Goal

The District shall achieve the overall triennial goal for DBE participation through race-neutral measures.

1. Race-Neutral Methods

The District intends to use race-neutral methods to the maximum extent feasible to achieve its overall triennial DBE goal. DBE participation that is obtained on contracts that have no specific DBE goal, or where prime contractors use a strictly competitive bidding process, or do not consider the DBE's status as a DBE in

awarding a subcontract, shall be considered race-neutral DBE participation. In addition, the District will use the following measures as appropriate:

- (a) Configuring large contracts into smaller contracts when feasible. When to do so would make contracts more accessible to small businesses and would not impose significant additional cost, delay, or risk to the District.
- (b) Identifying components of the work that represent subcontracting opportunities and identifying the availability of DBE subcontractors to participate in an equitable proportion to total available subcontractors when it is not feasible to configure large contracts into smaller separate contracts. Contractors will be encouraged to consider subcontractors for components of the work, including DBEs, for which there is a known supply of ready, willing, and able subcontractors, including DBE subcontractors, in preparing their bids.
- (c) Providing technical assistance in orienting small businesses to public contract procedures, use of the Internet, and facilitating introductions to the District's and other U.S. DOT recipients' contracting activities.
- (d) Providing outreach and communications programs on contract procedures and contract opportunities to ensure the inclusion of DBEs.
- (e) Ensuring the distribution of the DBE Database to the widest feasible universe of potential prime contractors.

2. Good-Faith Efforts When a DBE Is Replaced on a Contract

When a contractor has established that they will meet a goal on a contract, the District will require a contractor to make good-faith efforts to replace a DBE that is terminated or otherwise has failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contractor's goal. The District will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

Per 49 CFR 26.53, a contractor cannot terminate or replace a DBE without good cause. The prime contractor may not terminate a DBE firm for convenience.

The contractors may not terminate a DBE firm and perform the work with its own forces without the District's prior written consent.

In this situation, the District will require the prime contractor to obtain the District's prior approval of the substitute DBE and to provide copies of new or amended subcontracts or documentation of good-faith efforts. If the contractor fails or refuses to comply in the time specified, the District's contracting office will issue an order stopping all or part of the payment/work until satisfactory action has been

taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

E. Counting and Tracking DBE Participation

This section will address how DBE participation is counted toward the District's DBE goal, once a DBE is determined to be certified and eligible to participate in the District's DBE Program. The following guidelines apply in calculating DBE participation toward meeting established goals in accordance with 49 CFR 26.55:

1. Only the work actually performed by a DBE will be counted towards the DBE goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) also may be counted toward the DBE goal.
2. When a DBE subcontracts part of the work of its contract scope to another firm, the value of the subcontracted work may be counted toward the DBE goal, only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce.
3. In instances of joint venture, a proposer may only count toward its DBE goal, the portion of work proposed to be performed by the DBE partnering firm, which meets certification, ownership and control standards.
4. A proposer may count toward its DBE goal, only expenditures to firms that are proposed to perform a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved.
5. A proposer may count toward its DBE goal, sixty percent (60%) of its expenditures for materials and supplies required under the contract and obtained from a DBE regular dealer, and, one hundred (100%) percent of such expenditures to a DBE manufacturer. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials and supplies obtained by the contractor. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.
6. A proposer may count towards its DBE goal, fees and commissions paid to DBE firms that are not manufacturers or regular dealers, provided that the fees or commissions are determined to be reasonable and not excessive, as compared with fees customarily allowed for similar services.
7. Special Provisions for Trucking - A proposer may count towards its goal, all transportation services provided by DBE trucking firms, who can demonstrate control of trucking operations for which it seeks credit, and, it owns, insures,

and operates, using drivers it employs in the performance of the contract. The DBE trucking firm may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE receives credit for the total value of the transportation services which the leasee DBE provides on the contract. The DBE which leases trucks from a non-DBE is entitled to credit only for the fees or commissions it receives as a result of the lease arrangement.

8. Prime contractors are advised not to count the participation of DBE subcontractors towards the prime contractor's DBE achievements, until the amount being counted toward the goal has been paid to the DBE.
9. In cases where DBE certification has ceased during the performance period of the contract, the prime contractor will continue to report the dollar value of the work performed to the District on the monthly DBE Paid Report (Form 103), however, the District will not count the participation towards its overall agency goal.

VI. REQUIRED CONTRACT PROVISIONS

FTA-assisted contracts that the District lets will include, as appropriate, the model contract provisions that are included in 49 CFR Part 26 and incorporated herein. The DBE Liaison Officer shall have discretion to modify the provisions for particular contracts as needed.

A. Contract Assurance

The District will ensure that the following clause is placed in every U.S. DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

B. General Conditions

1. **DBE Program for Contracts.**

Solicitation language shall require that contractors must meet all requirements of the DBE program as a matter of responsiveness.

2. **Prompt Payment to Subcontractors.**

The District requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR § 26.29, the District established a contract clause implementing this requirement and require prime contractors to pay subcontractors

for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the District. Any delay or postponement of payment from the above-referenced timeframe may occur only for good cause following written approval of the District. This clause applies to both DBE and non-DBE subcontracts.

The District ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactory completed. Pursuant to § 26.29, the District has selected the following method to comply with this requirement:

The District may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after the District pays to the prime contractor.

3. Monitoring and Enforcement.

The District has established the following to monitor and enforce prompt payment and return of retainage:

The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have already performed.

Failure of any contractor to meet the DBE Supplemental Required Contract Provisions and program authorities shall constitute a breach of contract for which the imposition of the following sanctions may include but is not limited to the following:

- (a) Temporarily withholding progress payments possible through future performance
- (b) Permanently withholding payment for work already performed in a manner that constitutes a breach of contract

4. Payment Compliance Clause.

The contractor is required to submit information to LTD regarding payment to subcontractors on a monthly basis. This information shall include name and address of subcontractor and payment date and amount.

5. Contract Assurance Clause.

Lane Transit District will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

C. Special Provisions

Solicitation language shall require that contractors must meet all requirements of the DBE program as a matter of responsiveness.

D. Administrative Sanctions

Failure of any contractor to meet the DBE Contract Provisions shall constitute a breach of contract for which the imposition of the following sanctions could occur:

- Temporarily withholding progress payments until the contractor complies with these contract provisions through future performance
- Permanently withholding payment for work already performed in a manner that constitutes a breach of contract

VII. CERTIFICATION

A. Oregon Office of Minority, Women and Emerging Small Business Enterprise Program

The District does not certify DBEs; it relies upon the services of the Oregon Office of Minority, Women and Emerging Small Business Enterprise Program (OMWESB) for certification. As the sole certification authority in Oregon for targeted government contracts for emerging small businesses and disadvantaged, minority, and woman-owned businesses, OMWESB provides a unified certification process.

The OMWESB complies with 49 CFR Part 26 in determining whether to certify a firm as eligible to participate as a DBE. The certification forms and instructions can be found on the Internet at <http://www.oregon4biz.com/Grow-Your-Business/Business-services/Minority-Owned-Business-Certification/>

B. Unified Certification Program (UCP) (Section 26.81)

The District is a member of the statewide DBE Unified Certification Program (UCP). The website to be certified is located at <http://www.oregon4biz.com/Grow-Your-Business/Business-services/Minority-Owned-Business-Certification/>

The DBE Liaison Officer is designated by the General Manager to represent the District as a member of the Unified Certification Program (UCP). The District will participate in UCP programs, activities, and efforts in the Eugene-Springfield area to create a level

playing field on which DBEs can compete fairly, to enhance outreach and communication efforts with these firms, to provide appropriate assistance and information for participation in U.S. DOT-assisted contracts, to develop joint resources among recipients, and to coordinate DBE certification efforts through reciprocity and the development of a statewide Unified Certification Program. Toward this end, the DBE Liaison Officer will attend scheduled meetings of the UCP and will contribute to the achievement of UCP projects approved by the District's General Manager.

VIII. CERTIFICATION PROCEDURES

A. Certification Appeals to U.S. DOT (Section 26.89)

A firm that has been denied certification or whose eligibility is removed may make an administrative appeal to the U.S. DOT. A complainant in an ineligibility complaint to the District may appeal to U.S. DOT if the District does not find reasonable cause to propose removing the firm's eligibility. Pending the U.S. DOT appeal decision, the District's decision shall remain in effect. All appeals shall be sent to the following address:

Director, Office of Civil Rights
Federal Transit Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

All requests for an appeal must be sent, in writing, within ninety (90) days of the District's final decision on the matter. The appeal request shall include information and arguments regarding why the decision should be reversed. If the appeal is from a firm, the request must include information regarding certification with other U.S. DOT recipients. If the appeal is from a third party, the party will be requested to provide the same information.

The DBE Liaison Officer shall provide a copy of a complete, well-organized, administrative record within twenty (20) days of a request from U.S. DOT. U.S. DOT will make its decision based solely on the entire administrative record without conducting a hearing. The firm and complainants shall have access to any information reviewed by U.S. DOT in accordance with public records and privacy laws.

U.S. DOT will affirm the District's decision if it determines, based on the entire administrative record, that the decision is supported by substantial evidence or is consistent with the substantive or procedural provisions concerning certification. U.S. DOT will reverse the District's decision if it determines it was unsupported by substantial evidence or inconsistent with certification provisions. U.S. DOT shall send written notification of its decision, including the reasons therefor to the District, the firm and any complainant. If the District's decision is reversed, the DBE Liaison Officer will take all appropriate actions to conform to the U.S. DOT's decision immediately upon receiving the written notice. U.S. DOT decisions are final and binding on the District only.

IX. MONITORING AND RECORD KEEPING

A. Bidders List

The District will require all prime contractors bidding on FTA-assisted contracts to return, at the time of bid opening (options apply as to the time this information is required as long as it is prior to the award of the contract), the following information about the prime contractor and all subcontractors who provided a bid or were contacted by the prime contractor:

- Firm's name
- Firm's address
- Firm's status as a DBE or non-DBE
- Age of the firm
- Type of work

The District will use this information to maintain and update its Bidders List. The District will maintain the confidentiality of any proprietary information in accordance with applicable Oregon laws.

B. Monitoring Payments to DBEs

The District shall monitor and enforce contractor's compliance with the prompt payment provisions as well as all other applicable provisions to ensure all contract terms and conditions are fully adhered to. Evidence of payment made to subcontractors must be provided by the prime contractor starting with the second request for payment/invoice. Credit toward overall goal will only be given upon satisfactory evidence that payments were actually made to DBEs. Failure to comply with these provisions or delay in payment without prior written approval from the District will constitute noncompliance, which will result in appropriate administrative sanctions, up to and including withholding of payment to the prime contractor.

It is the contractor's responsibility to maintain records and documents for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the District, FTA, or U.S. DOT. This reporting requirement also is extended to any certified DBE subcontractor.

The District will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the report of proposed DBE participation.

C. Monitoring Actual DBE Participation

The DBE Liaison Officer shall monitor and track the actual DBE participation through contractor and subcontractor reports of payments and other appropriate monitoring. The DBE Liaison Officer shall ensure that DBE participation is counted toward contract goals and the overall triennial DBE goal in accordance with the Regulations.

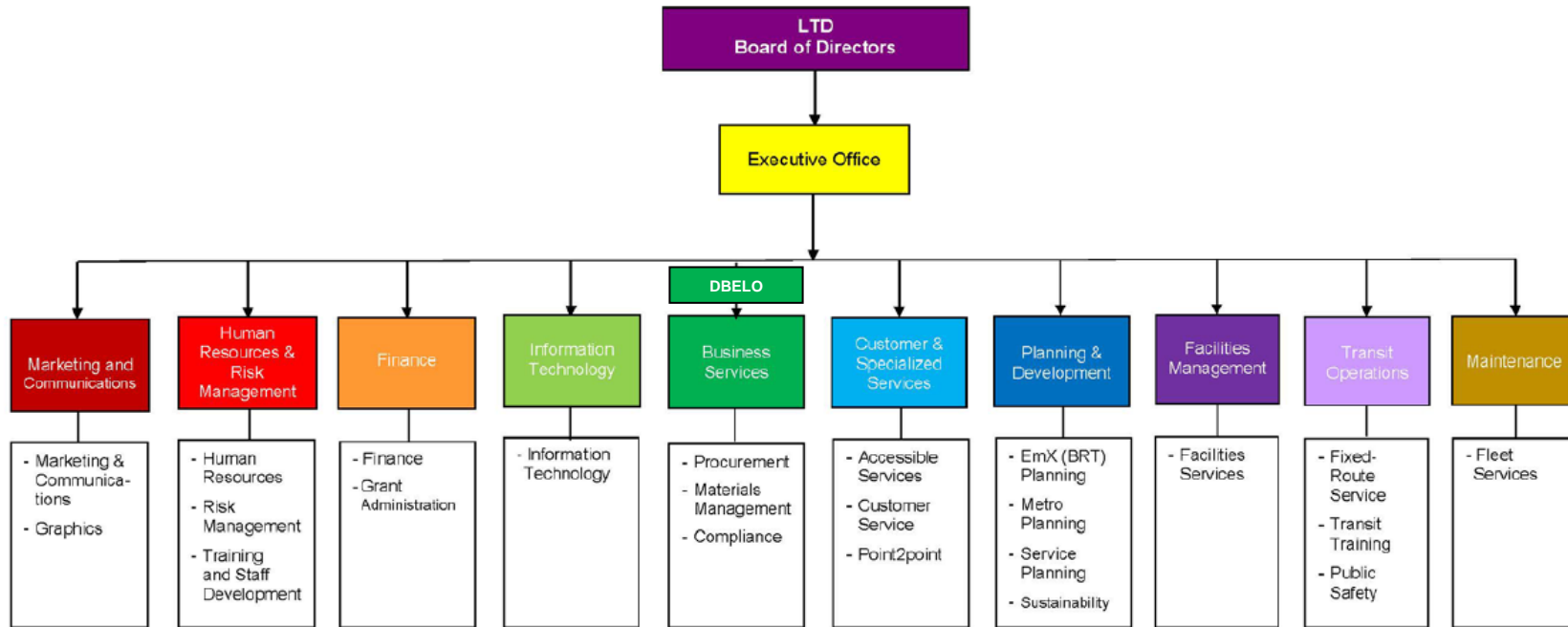
Worksites shall be monitored periodically to ensure DBE contractors and subcontractors are performing assigned work and written verification shall be kept in contract files.

D. Reporting to FTA

The District will continue to report DBE to the FTA on an annual basis. This report will capture DBE participation for U.S. DOT-assisted for contracts awarded and actual DBE attainments based on payments made to DBEs on U.S. DOT-assisted contracts that are on-going and closed within the respective reporting period. This report will provide DBE participation information on the District's race-neutral contracts, race-conscious contracts, and the combined DBE participation on all federally assisted procurement activities.

APPENDIX A – District Organization Chart

ORGANIZATION CHART (DBE) July 2019



APPENDIX B – Triennial DBE Goal Methodology
(ATTACH TRIENNIAL DBE GOAL METHODOLOGY)

APPENDIX C – Federal Financial Assistance Agreement Assurance

FEDERAL FINANCIAL ASSISTANCE AGREEMENT ASSURANCE

I, Aurora Jackson, General Manager, hereby certify on behalf of Lane Transit District that:

The undersigned shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation, and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the undersigned of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Executed this 20th day of November, 2019.

By: _____
Aurora Jackson, General Manager
Lane Transit District

Each contract LTD signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub-recipient or subcontractor race, color, national origin, or sex in the performance of this contract: The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

APPENDIX D – DBE Program Regulations

Electronic Code of Federal Regulations: <https://www.ecfr.gov/cgi-bin/text-idx?SID=df3d6559c9a2eaa282bfc8471369a744&mc=true&node=pt49.1.26&rgn=div5>






DBE PolicyProgram Update

Final Audit Report

2020-08-06

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